

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BRANDON DREWRY,)	
)	
Plaintiff)	
)	
v.)	1:22-cv-00095-JAW
)	
WELLPATH, INC., et al.,)	
)	
Defendants)	

**ORDER ON PLAINTIFF'S MOTION FOR RELIEF FROM
PAYMENT OF FILING FEE**

Plaintiff asks the Court to waive the initial partial filing fee of \$3.34 as assessed in the Court's order permitting Plaintiff to proceed without prepayment of the filing fee. (Motion, ECF No. 14; Order, ECF No. 6.)

Title 28 U.S.C. § 1915(b), which governs the filing fee for prisoners who are permitted to proceed without prepayment of the filing fee, requires ultimate payment of the fee. The statute states in pertinent part:

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C.A. § 1915(b). The filing fee is mandatory rather than discretionary. *See Barnes v. Hennepin Cnty. Dist. Attorney's Office*, 364 F. App'x 301, 302 (8th Cir. 2010) (holding that the Court lacked the authority to refund the filing fee of a prisoner whose section 1983 claim was dismissed with prejudice); *Porter v. Dep't of Treasury*, 564 F.3d 176, 180 (3d Cir. 2009) (holding that the Court lacked the authority to waive the unpaid portion of a filing fee); *Purkey v. Green*, 28 F. App'x 736, 746 (10th Cir. 2001) (holding that section 1915(b) does not "condition payment of the filing fee on success on the merits").

Because payment of the filing fee, including the initial partial filing fee, is mandatory, the Court cannot waive the fee. The Court, therefore, denies Plaintiff's motion.

NOTICE

Any objections to this order shall be filed in accordance with Federal Rule of Civil Procedure 72.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 24th day of June, 2022.